

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2006

CORAM:

THE HON'BLE MR. JUSTICE P.D. DINAKARAN
AND
THE HON'BLE MR. JUSTICE M. THANIKACHALAM

CRL.A.NO.1393 OF 2004

Ramaraj

..Appellant/
Accused -2

vs.

The Inspector of Police
Padalur Police Station,
Cr.No.179 of 2002

...Respondent/
Complainant

Appeal filed under Section 374 Cr.P.C. against the Judgment in S.C.No.60/2003 dated 19.11.2004 passed by the District Sessions Judge, Perambalur.

For Appellant : Mr. AR.L. Sundaresan
Senior Counsel
for Mrs. A.L. Gandhimathi

For Respondent : Mr. N.R. Elango
Addl. Public Prosecutor.

J U D G M E N T

M. THANIKACHALAM, J.

The appeal is directed against the Judgment in S.C.No.60/2003 on the file of the District Sessions Judge, Perambalur, wherein A-2/appellant was convicted and sentenced along with the first accused, under Sections 452, 324 and 302 I.P.C.

2. The case came to be filed at the instance of the respondent herein against the 2nd accused/appellant and two others alleging, that all the three have made preparation for assaulting one Thangavel and his family members, trespassed into the Kattukottagai, farm house of Thangavel on 12.9.2002 at about 11.30 p.m., that all of them have assaulted Thangavel, his wife, their daughter in law-Jayalakshmi, that with the intention to commit murder, A-1 and A-2 assaulted

Jayalakshmi over her head causing head injuries, that in view of the head injuries sustained, despite treatment, Jayalakshmi died on 18.9.2002 at about 6.00 p.m., that A-3 in furtherance of the common intention acted along with other two accused, that they have also criminally intimidated all the inmates of the house and therefore, they should be dealt with under Section 452, 326, 324, 302, 302 r/w 34 and 506(ii) I.P.C.

3. The learned Sessions Judge, perusing the records and the other materials produced, satisfied prima facie and therefore, framed charges against the accused, but all the accused refused to plead guilty, when questioned, resulting trial, examining the witnesses.

4. On behalf of the prosecution, 16 witnesses have been examined seeking aid from 25 documents and M.Os.1 to 9. On behalf of the defence, Ex.D1 was marked.

5. The evaluation of the above materials, in the touchstone of credibility, brought to surface the guilt of A-1 & A-2 alone, whereas it failed to prove the guilt of A-3. The learned Sessions Judge, while assessing the evidence, came to the conclusion, that the motives projected by the prosecution, for the commission of the offence by the accused are proved, though different for each accused, that the oral evidence of P.Ws.1 & 2 supported by the oral evidence of P.Ws.5 & 6 proved the guilt of A-1 and A-2 alone beyond all reasonable doubt, though originally the injured have reported to the doctor that they have been assaulted by one known person and two unknown persons, that only due to the head injuries inflicted by A-1 & A-2, Jayalakshmi succumbed to those injuries, despite the treatment, for which they should be held responsible, that there is no reason to disbelieve the injured eyewitnesses in view of the fact, the delay in preferring the F.I.R., if any, is acceptably explained by the prosecution and that the oral evidence is fully corroborated by the medical evidence also. But at the same time, the learned Sessions Judge took the view, since at no point of time A-3 was indicated, as known person and subsequently also prior to trial though, he was identified before the trial Court, the benefit of doubt should be given to him. Thus, giving the benefits of doubt, he acquitted A-3 from all the charges, convicted A-1 & A-2 under Sections 452, 324 and 302 I.P.C., sentencing them to undergo, three years R.I. for the offence under Section 452 I.P.C.; one year R.I. for the offence under Section 324 I.P.C.; and life imprisonment for the offence under Section 302 I.P.C. and imposing a fine of Rs.500/- for the offence under Section 452 I.P.C. in default one month R.I. and a fine of Rs.1000/- in default three months R.I. for the offence under Section 302 I.P.C. against the second accused alone.

6. A-1 by name M.G. @ Rajendran though had been convicted and sentenced for the offences under Sections 452, 324 and 302 I.P.C., as

on this date, he has not preferred any appeal.

7. The prosecution, though had let in evidence implicating A-3, and despite the eyewitnesses have spoken about the overt acts said to have been committed by him, aggrieved by the acquittal of A-3, has not preferred any appeal, questioning the correctness of the acquittal. A-2 alone had challenged the conviction and sentence in this appeal. In this view of the matter, we are called upon to decide, whether the conviction and sentence slapped upon A-2/appellant, is sustainable or not, whether the conviction is based upon unassailable legal evidence or it could be assailed because of the absence of the legal evidence. It seems, the third accused had been acquitted on false notion, not properly appreciating the evidence, which cannot be the sole consideration, for acquitting A-2, if it is further shown the acquittal is incorrect, though it is not challenged. In the same manner, only on the ground the conviction slapped upon A-1 has not been challenged, it is also not legally sound to say that the same result should visit upon A-2/appellant.

8. Facts necessary for the disposal of this appeal as culled out from the prosecution evidence:

(1) Thangavel (P.W.1), Kowsalai (P.W.2) are the husband and wife and their son is Pitchaipillai (P.W.3). Pitchaipillai's wife is Jayalakshmi. All the four were residing at Nattarmangalm Village, in their farm house when the incident narrated in the final report had taken place. All the accused in S.C.No.60/2003 are also the residents of Nattarmangalam.

(2) A-3 and P.W.3 contested for the post of President of the Panchayat, resulting enmity. A-2 unable to maintain himself, having quarreled with his wife, borrowed a sum of Rs.5,000/- from P.W.1 and not only that, without discharging the said debt, he demanded a further sum of Rs.10,000/-, which was refused, resulting a warning given by A-2 to P.W.1. A-1 had some problem with his wife and therefore, he requested P.W.1, to reconcile the same, refusal also resulted grievance. Thus all the accused had some motive against P.W.1's family.

(3) On 12.9.2002, P.W.1, P.W.2, their daughter in law by name Jayalakshmi, were sleeping in their farmhouse while P.W.3 had been to manure shop, which is in the village. At about 11.15 p.m. or so, during night hours, P.Ws.1 & 2 heard the barking of the dog, and suspecting something, they searched, found none, went to sleep in the room once again. In the adjacent room, Jayalakshmi was sleeping. At the top of the farm house, a tube light was burning throughout the night. At about 11.30 p.m., the accused appellant and two others trespassed into the room where P.Ws.1 & 2 were sleeping, assaulted them with iron rod, causing injuries. Immediately all of them came

out from the room crying and hearing the noise of P.Ws.1 & 2, their daughter in law Jayalakshmi came out, from her room. On seeing the daughter in law, the accused have assaulted her also using the iron rod and other weapons, causing head injuries and other injuries. Thereafter all the accused ran away from the scene of crime with the weapons.

(4) P.W.1, who lost his dhothi during the assault, making noise, ran to the house of P.W.5-Alagiri. P.W.5 and P.W.6. who are neighbours hearing the noise of P.W.1 came out and provided a dhothi for P.W.1. On their enquiry, P.W.1 revealed to them, that he and his family members were assaulted by the accused. Immediately all of them reached the scene of crime, where they have seen P.W.2 and Jayalakshmi with bleeding injuries. P.W.5 sent a message to P.W.3, through P.W.7. Upon reaching the scene of crime, when P.W.3 enquired his father-P.W.1, he informed to him that he was assaulted by all the accused. Thereafter, P.W.3 took all the injured, to the Government Hospital, Perambalur, where P.W.10 was working as Medical Officer.

(5) P.W.10 examined P.Ws.1 & 2 on 13.9.2002 at about 4.15 a.m. At the time of the examination, he has noticed the injuries upon the persons viz., P.Ws.1 & 2, which are incorporated in Exs.P8 & P9. Jayalakshmi was admitted in the Government Hospital, Perambalur, at the first instance, then taken to Trichy, where despite treatment, there was no improvement and therefore, she was taken to a private hospital, where PW.14 examined her and issued Ex.P16 report.

(6) After admitting the injured in the hospital, the same was informed to Padalur Police Station, where P.W.13 was working as Sub Inspector of Police. Immediately, P.W.13 went to the hospital, examined P.W.1, recorded his statement Ex.P1, on which basis a case was registered originally under Sections 452, 324, 506(ii) I.P.C., submitted the printed F.I.R. (Ex.P.13) to the Court, marking the copies to the higher authorities also.

(7) Thereafter, P.W.13 went to the scene of crime at about 12.00 noon, prepared observation mahazar-Ex.P2, Sketch-Ex.P14 in the presence of P.W.4 and another witness. He also examined P.Ws.1 to 3, recorded their statements. Jayalakshmi, who was admitted in the Trichy Hospital succumbed to the injuries, which was informed to the police on 18.9.2002 on which basis, the case was altered under Section 302 I.P.C. for which Ex.P.15 was submitted to the Judicial Magistrate. Then the case was taken for investigation by the Inspector of Police, P.W.15.

(8) Upon receipt of the copy of FIR., PW.15, taking the case for investigation, went to Trichy Government Hospital conducted inquest over the body of Jayalakshmi in the presence of Panchayatdars, prepared the inquest report-Ex.P17. He has also

examined P.Ws.1 to 3, recorded their statements. In order to ascertain scientifically the cause of death of Jayalakshmi, the body was sent for postmortem with requisition-Ex.P.19 through P.W.9.

(9) Upon the receipt of the request, and on identification of the body, P.W.12 conducted postmortem over the body of Jayalakshmi, which revealed the following injuries, which are incorporated in the postmortem certificate-Ex.P.11.

1. A sutured wound, 9 cm in length, on the saggital plane, on the left side of frontal and parietal regions of the scalp, 5 cm away from the midline, 4 cm away from left eyebrow on removal of sutures, edges irregular, 0.5 cm in breadth bone deep.

2. A sutured wound 4 cm in length on the centre of frontal region of scalp, obliquely placed 6 cm away from glabella. On removal of the sutures:- edges regular, 0.5 in breadth, bone deep.

3. A curved sutured wound, 24 cm in length on the right side of frontal, parietal, temporal region of the scalp, 6 cm away from the eyebrow and 1 cm above the right ear. On removal of the sutures:- edges regular, 1 cm in breadth, exposing brain matter. The underlying bones of size 12 cm x 10cm and meninges are missing. Bruising of dark red, subdural hemorrhage and subarachnoid hemorrhage on both cerebral hemisphere laceration of left temporal lobe of cerebrum with intra-cranial hemorrhage. Softening of the brain matter present. Tissued and comminuted fracture of anterior and both middle cranial fossa communicates with entire fracture.

4. Dark brown colour abrasions, 4 cm x 1 cm on the upper part of outer aspect of right thigh. The above mentioned wounds are antemortem.

(10) Viscera preserved was sent for chemical examination through Court and the chemical examination report is Ex.P.12. A-3, Balusamy surrendered in another case was secured on P.T. Warrant in this case. Upon examination, he has given the confession Ex.P.18. Pursuant to the investigation, A-1 & A-2 were also arrested in the presence of P.W.8 and another and they have also given the confession and the admissible portion of the same is Ex.P.5. Pursuant to the same, M.O.2 and M.O.3 were recovered under the cover of mahazar-Ex.P.6. P.W.15 has given a requisition to the Court to send the material objects recovered and submitted to the Court, for chemical examination under-Ex.P.22, which was conceded under Ex.P.23 resulting

report Exs.P.24 and P.25. Meanwhile, since P.W.15 was transferred further investigation was taken by P.W.16. At the request of the Investigating Officer, under Ex.P.19, the Judicial Magistrate, Perambalur recorded the statements of P.Ws.1 & 2 under Exs.P.20 and P.21.

(11) P.W.16 examined the doctor, perused the previous investigation done by P.W.15 which brought to surface that all the accused should have committed the offence, and in this view, a final report came to be filed, leading to trial ending in conviction as stated above, which is impugned only by A-2 in this appeal.

9. Heard the learned Senior Counsel for the appellant, Mr.AR.L. Sundaresan and the learned Addl. Public Prosecutor, Mr.N.R. Elango.

10. Mr. AR.L.Sundaresan, the learned senior counsel appearing for the accused/appellant attempted to assail the conviction of the appellant on the following grounds viz:-

(a) that the names of all the accused are not mentioned in the F.I.R. though the accused were known to the victims viz., P.Ws.1 & 2;

(b) that the inordinate delay in giving the F.I.R. and sending the same to the Court spontaneously create doubt, which benefit should go to the accused;

(c) that the F.I.R. relied on by the prosecution viz., Ex.P.1 is doubtful, in the sense, it may not be the original F.I.R., since there is some evidence indicating, even before Ex.P.1, statements should have been recorded from the witnesses and if at all that should be the original F.I.R. and the suppression of the same should lead to doubting the genesis of the case;

(d) that after investigation commenced, if at all Ex.P.1 should have been procured;

(e) that the weapons said to have been recovered on the basis of the confession is not proved and also doubtful;

(f) that at each and every stage, the prosecution attempted to improve the case thereby giving an unquestionable chance to doubt about the veracity of the witnesses;

(g) that on the same material produced by the prosecution, despite the fact there is implication of A-3 also. he has been acquitted and the same kind of benefit should be extended to the accused/appellant, since he is also standing in the same footing;

(h) that there would not have been any possibility for the witnesses to identify the assailants since there was no light or proper light in view of the admitted fact, the incident had taken place during night hours;

(i) that there is inconsistency in the statements given to the doctor as well as given to the police regarding the assailants, whether they are known or unknown;

(j) that there is no specific overt act against the accused/appellant, leading to irresistible conclusion that the injury said to have been inflicted by him must be the cause for the death of Jayalakshmi that too with intention and if at all, in case the evidence of the prosecution is to be believed, the offence will not come under Section 302 I.P.C., whereas it should come under lesser offence.

Elaborating the above points, taking us through the evidence in detail, and pointing out the contradictions and omissions, as if available in the prosecution witnesses, a vociferous argument was made by the learned senior counsel to discharge the accused/appellant from the charges, for which he was convicted.

11. The learned Additional Public Prosecutor responding the above submissions would submit, that practically there is no delay in preferring the complaint and even if there is any delay, the same is explained, that the fact P.Ws.1 and 2 have stated to the doctor that they have been assaulted by one known person and two unknown persons, may not be a ground to eschew their oral evidence as unworthy since they have categorically deposed about the actual involvement of the accused/appellant being the injured witnesses, which is corroborated by the neighbours also, that small contradictions and omissions should not be magnified only for the purpose of creating doubt that the wrong acquittal of A-3 cannot be a ground to acquit the 2nd accused/appellant also since those grounds on which basis A-3 was acquitted, will not be available legally to the accused appellant. Thus opposing the submissions made by the learned senior counsel for the appellant and taking us through the oral evidence, documents relied on, including the Judgments of the trial Court, where unassailable reasons are assigned, for the conviction of A-2, a strenuous submission was made for sustaining the conviction.

12. The accused/appellant has been convicted and sentenced to undergo imprisonment for the offences under Sections 452, 324, 302 I.P.C. It is the case of the prosecution that A-2 assaulted P.W.1 with an iron rod causing injuries, as if grievous one. The trial Court convicted A-2/appellant only under Section 324 I.P.C. for causing simple injuries, with the iron rod. It is the further case of the prosecution, that this accused also assaulted Jayalakshmi causing head injuries, which also terminated her life prematurely. For doing these acts, it is the case of the prosecution, that the accused along with two others trespassed into the house of P.W.1, having made the preparation for causing hurt. Therefore, before going into the question, who caused simple injuries to P.W.1 and who caused head injuries to the deceased, let us see whether P.W.1 sustained injuries and Jayalakshmi died due to head injuries, in order to bring the acts of the assailants, voluntarily causing hurt and committed murder with an intention.

13. The doctor, who had examined P.W.1 viz., P.W.10 issued wound certificate, for the injuries sustained by P.W.1 under Ex.P8. There was four injuries. According to the opinion of the doctor, three injuries are simple in nature and one injury is grievous. However, the trial Court has held the accused/appellant is answerable only for the simple injury. The injuries sustained by P.W.1 even as spoken by him and the nature of injuries sustained by him are not disputed, though the dispute is who had caused those injuries. In this view, it is to be held that in the incident which took place on 12.9.2002 at about 11.30 p.m., P.W.1 sustained simple injuries, which should have been caused by the deadly weapon such as an iron rod.

14. At the request of the investigating officer, P.W.12 conducted postmortem over the body of Jayalakshmi on 19.9.2002. Though the incident had taken place on 12.9.2002 at 11.30 hours, Jayalakshmi succumbed to the injuries only on 18.9.2002. As indicated by us early, four injuries were noticed over the body of Jayalakshmi. The doctor opined in Ex.P.11, that the deceased died due to Cranio cerebral wounds, which is the result of head injuries. When the doctor has detailed, about the injuries and has given opinion about the cause of death, not disputed. Therefore, it is to be held that Jayalakshmi died due to culpable homicide i.e. because of the assault with deadly weapons over her head. It is also not the case of the appellant before us, that Jayalakshmi died due to some other cause and therefore, slapping the conviction against the accused under Section 302 I.P.C. is erroneous, on fact. Under the above said circumstances, we reiterate and conclude that Jayalakshmi died, due to homicidal violence amounting to murder. For sustaining the injury by P.W.1 and for sustaining the head injury by the deceased, if it is proved, that A-2 also contributed his act, directly or in furtherance

of the common intention, the accused/appellant is answerable either under Section 302 or 302 r/w 34 I.P.C. and 324 I.P.C. and there could be no escape.

15. Ex.P.1 moved the wheels of the investigation. The complaint Ex.P.1 is attacked on the ground that it should have been procured after the commencement of the investigation, suppressing the earlier statement given by the injured and therefore, the foundation of the case itself, shaky and doubtful, thereby seeking the benefit of doubt. As spoken by P.W.13, he recorded the statement from P.W.1 on 13.9.2002 and on that basis, Ex.P.13 was prepared and submitted to the Court. It is also the case of P.W.1 that he was examined by the police and the police had recorded the statement obtained his signature. As seen from Ex.P.1, it was recorded on 13.9.2002 at 11.00 a.m. At the time of recording the F.I.R. or at the time when the doctors have informed the police, there was no death. The original F.I.R. was registered only under Sections 452, 324 and 506(ii) I.P.C. The F.I.R. so registered reached the Court on 14.9.2002 at about 1.00 p.m. as recorded by the Learned Sessions Judge, in his Judgment at paragraph-4. True, there was some slackness because of the nature of the injuries and the offence reported at that time. Therefore, it is not possible to say, that taking advantage of this delay, a new F.I.R. was prepared or procured, substituted, suppressing the earlier statement given by the injured. Ex.D1 also fails to come to the aid of the appellant, though the same is having separate serial number, in view of the fact, the original F.I.R. in this case as well as Ex.D1 contained the same averments, without any change. In this view, we are unable to accept the contention of the learned senior counsel for the appellant, that original complaint should have been suppressed and Ex.P.1 should have been secured later and that is why two printed F.I.Rs were prepared in different forms. The investigating officer, has explained how this mistake had occurred, which deserves acceptance, in the absence of any contradictions or additions available in the averments available in both the documents. P.W.1 has categorically stated, that Padalur Sub Inspector came to the hospital, recorded the statement, identifying Ex.P.1. During the cross examination by A-1, he has stated that he does not know, what was written in the document in which the police obtained his signature. He has further stated, that on the next day, he was examined by the police at about 8.00 a.m. Taking advantage of the above evidence, the learned senior counsel argued that the previous statement recorded should have been suppressed, which we are unable to agree. After all P.W.1 is a rustic village man, and it is not proper to expect mathematical precision, about the time and the contents of the document, when he was cross examined. Therefore, the evidence so given by P.W.1, in our considered opinion, failed to erase Ex.P.1, or even failed to create any reasonable doubt. In this view, we conclude there is no delay in giving the information to the police, though there is some delay in the printed F.I.R. reaching the

Court and that delay could be ignored, because of the nature of the offence then reported and recorded. Thus, it is proved when the victims had the opportunity to say, at whose hands they have suffered the injuries, they have clearly stated the names of the accused, including the appellant, in which we are unable to entertain any doubt.

16. The main thrust of the learned senior counsel for the appellant, was that P.Ws.1 & 2 would not have identified A-2 at all, at the time of the assault and that is why at the earliest opportunity, when there was no intervention of the police, they have stated specifically to the doctor that they were assaulted by "one known person" and "two unknown persons" and this being the position, convicting the accused/appellant, who was described as unknown person, is legally not sound. It is an admitted fact, that all the accused belong to the same village and the accused also known to P.Ws.1 & 2. Therefore, it is the submission of the learned senior counsel for the appellant that if A-2/ appellant had attacked P.W.1, P.W.2 and Jayalakshmi, they would not have reported to the doctor that they were assaulted by 'one known person' and 'two unknown persons' since reported so this would clinchingly prove the absence of the second accused/appellant, at the time of the incident and on this ground alone, A-2 is entitled to an acquittal. In this view, it is the further submission of the learned senior counsel that subsequent improvement was made in Ex.P1 and therefore, relying on Ex.P1, even for corroboration, though it is not substantial evidence, as if the 2nd accused assaulted P.Ws.1 & 2 and the deceased may not be proper. The argument so advanced, though appeared to be attractive, at the first instance, by giving our deep consideration, considering the duty of the doctor, in addition to the judicial precedent, as well as the provisions available in the Madras Medical Code, we are unable to subscribe our view.

17. Ex.P8 is the wound certificate issued by P.W.10 for the injuries sustained by P.W.1. Ex.P.9 is the wound certificate issued by P.W.10 for the injuries sustained by P.W.2. In Ex.P.8, it is stated "alleged to have been assaulted by one known person and two unknown persons at 11.45 p.m. on 12.9.2002 (இரும்பு, கம்பியால் அடித்து கத்தியால் வெட்டினர்) at his Kattukottai, Nattarmangalam" (emphasis supplied). In Ex.P.9, it is stated "alleged to have been assaulted by one known person and two unknown persons (கண்ணை கட்டி வாயில் துணி வைத்து அடைத்து கடப்பாறை, கம்பியால் அடித்தனர்) at her Kattukottai" (emphasis supplied).

18. When P.W.1 was cross examined by A-2 & A-3, he has specifically stated that he informed the doctor that he was assaulted by two known persons and one unknown person which reads in Tamil,

"டாக்டரிடம் என்னைத் தெரிந்த 2 நபரும், அடையாளம் தெரியாத ஒரு நபரும் தாக்கினார்கள் என்று சொல்லியுள்ளேன் "

But P.W.2 during the cross examination by the first accused would admit, that she has reported to the doctor when enquired about the incident, that she was assaulted by one known person and two unknown persons. The doctor has also given as if P.Ws.1 & 2 have reported to him that they were attacked by one known person and two unknown persons.

19. On the basis of the above materials, Mr.AR.L.Sundaresan, the learned Senior Counsel argued that the earliest statements given to the doctor by P.Ws.1 & 2 that they were assaulted by 'two unknown persons' should be given due importance concluding that the subsequent evidence given must be an improvement, after the investigation has commenced. To appreciate this argument, we have to see the place of the incident.

20. In the house of P.W.1 as per Ex.P.14, there are two rooms; one on the west and another on the east. In the western room, P.Ws.1 & 2 were taking their bed, whereas in the eastern room, Jayalakshmi was sleeping. It is not the case of the prosecution or it is not in evidence from the mouth of P.Ws.1 & 2 also, that inside their room, the light was burning or they had sufficient light, to identify the persons exactly. Therefore, there might not have been any possibility for P.Ws.1 & 2, at the first instance to properly identify the assailants, though there was a possibility to identify by figure, from the natural light available, since it is also said, the door was kept opened. In this view, they might have stated originally, at the time of assault, one was known and others unknown. Immediately, after the assault, P.Ws.1 & 2 came out, and the second assault took place in front of the house, where a tube light was burning, at the top of the building as proved, not under challenge. Therefore, there was every possibility for P.Ws.1 & 2, to identify the assailants viz., A-1 & A-2. However, when there was an opportunity to say empathetically, who are the assailants, they failed to do so and therefore, we have to see whether that failure will alone give a chance for the accused appellants to crack the prosecution case, in order to come out. In this context, we have to see, what is the duty of a doctor, whether any information given by the injured would amount to statement admissible in evidence or whether that could be the basis for conviction or acquittal, as the case may be.

21. The Madras Medical Code (Vol.I) Section 10 paragraph-622 gives guideline or instructions to the doctor, how to fill up the columns, in the wound certificate. Para-622 (vi) reads:

"Medical officer should ascertain and incorporate in

the certificate only the alleged cause as to the manner in which the injuries were inflicted, the weapon used and the time."

The Medical Officer should ascertain the cause of the injury, weapon used, time, etc. thereby showing no power is vested upon the Medical Officer, to ascertain from the injured or the person accompanied the injured, who is the cause for the assault, whether it is known or unknown even. The doctor is concerned, to ascertain and incorporate in the certificate, how the injuries were inflicted and what is the weapon used, including the time, so as to find out, at later point of time, whether the injury would have been caused by the weapon produced on behalf of the prosecution said to have been used by the assailants on the basis of the recovery, if any. In this view, if the doctor had incorporated about the assailants as 'known' or 'unknown' or even naming the person, that can be ignored, which appears to be the dictum of the Apex Court also.

22. A division Bench of this Court in *Basheer v. State* 1993 (Crl.L.J. 2173), while considering the duty of a Medical Officer while preparing the wound certificate or making note in the Accident Register has stated that,

"Medical Officers should note whether assailants was known or unknown person though they are not expected to note name of the person"

It is further observed, that there is no harm if the doctor has reported, whether the injured sustained injury by a known person or unknown person. This ruling may not be an authority to say that if the doctor has noted in the wound certificate that the injured was assaulted by unknown person, subsequently if a case is filed against a known person, noting in the A.R. should be taken, as substantive evidence entitling him to an acquittal. Therefore, in our considered opinion, the ruling brought to our notice, by the learned senior counsel for the appellant, fails to advance the case of the defence, just because of the fact the doctor has entered in the wound certificate 'as unknown person', the accused is entitled to an acquittal and the genesis of the case should be doubted.

23. On the other hand, Mr.N.R.Elango, the learned Additional Public Prosecutor argued that the noting of the doctor in the wound certificate as 'known or unknown' should have no significance, since that noting will not amount to a statement given by the injured. For this view, our attention was drawn to a decision of the Apex Court in *P. Babu & others v. State of Andhra Pradesh* (AIR 1994 SCC 424). In the case involved in the above decision also, the same kind of situation had arisen. In the injury certificate, the doctor has noted that the injured was said to have been stabbed by somebody, not

specifically stating known person or unknown person. On that basis a submission was made before the Apex Court that as the deceased had stated at the first instance 'somebody has stabbed him', it should be held the deceased was not aware as to who stabbed him. The Apex Court, rejecting the said contention, as seen from para-6 of the Judgment at Page 428, has held thus:

"It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc."

24. If we read the above passage, coupled with Madras Medical Code, the irresistible conclusion that should be drawn legally is that the noting of the doctor, in the wound certificate or AR cannot be taken as the substantial evidence to fix the culpability or non culpability and the certificate has to be relied on, only for the purpose of ascertaining the nature of the injuries, the weapon used and the time alone. In the light of the above discussion, in our considered opinion, though P.W.2 has admitted, that she has stated to the doctor that she was assaulted by 'one known person and two unknown persons', it would not amount to a statement coming within the meaning of substantial evidence, and this being the legal position, as held by the Apex Court, on the basis of the noting made by the doctor, in Exs.P8 and P9, it is not at all possible to doubt, about the genesis of the case, which is described in the complaint-Ex.P.1, which set the law on motion or leading to the presumption that P.Ws.1 and 2 would not have seen the appellant/accused, at the time of assault.

25. It is the well settled principles of law, that rejecting the ocular evidence, on the ground of contradiction with medical evidence, as well as on the ground that the eye witness is highly interested person is incorrect, as ruled by the Apex Court in State of Rajasthan vs. Hanuman (2001 (1) SCC 337), wherein it is also held as follows:

"Evidence of eyewitnesses cannot be discarded merely on the ground that they are relatives of the deceased. Normally close relations of the deceased are not likely to falsely implicate a person in the incident leading to the death of the relation unless there are very strong and cogent reasons to accept such criticism".

26. Viewing the case from this angle also, the inconsistency regarding 'known' of 'unknown' may not loom large, since in our considered opinion, the evidence given by P.Ws.1 & 2, which is supported by the oral evidence of P.Ws.5 & 6 are quite convincing, being natural, in view of the further fact, P.Ws.1 & 2 are injured witnesses. Admittedly, P.Ws.1 & 2 are the victims in the hands of the assailants and they are competent to say, how, in whose hands they sustained injuries. There may be a chance because of the motive, to implicate the person, who is unwanted, taking advantage of the fact, that the injured sustaining injuries from some other hands also. In this case, to bring this case, with latter part, we are unable to find any circumstances, though there is a motive that motive may be the cause for the assault and certainly that motive may not be the cause, for implicating the accused, since the victims have no grievance against the accused, whereas it is vice versa.

27. As far as A-2/appellant is concerned, the motive alleged is, that even without discharging the earlier debt, he demanded Rs.10,000/-, refusal, caused grievance, resulting warning by the accused/appellant, which is well spoken by P.Ws.1 & 2. By going through the cross examination of A-2 and A-3, we are unable to find even any suggestive denial regarding the warning given by A-2, as spoken by P.W.1. Therefore, as held by the trial Court, it is to be held that there was motive for assaulting. Even assuming that there was no motive, if the incident is otherwise proved acceptably, that itself is sufficient to slap conviction and sentence and in this view we have to scan and appraise the oral evidence of P.Ws.1, 2, 5 & 6.

28. P.W.1 has categorically deposed before the trial Court, that the second accused Ramaraj assaulted him with iron rod over his head, as well assaulted his daughter in law also. His evidence is supported by another injured witness viz., P.W.2, who has stated, that Ramaraj assaulted her husband, over his head as well as assaulted her daughter in law over her head, using iron rod though the iron rod was not identified by her. Thus, P.Ws.1 & 2 have clinchingly spoken about the specific overt act committed by A-2/appellant, in causing injury to P.W.1 as well as causing head injury to Jayalakshmi, which led to her death also, as indicated by us. P.Ws.1 & 2 have stated that A-1 & A-2 have assaulted Jayalakshmi, over her head causing injuries. The doctor, P.W.12 had noticed more than 2 injuries, over the head of Jayalakshmi. True, P.Ws.1 & 2 have not stated, with certainty which injury was caused by which accused. An argument was advanced that when there was no medical evidence or specific evidence connecting the second accused that he is the cause for the death, convicting him under Section 302 I.P.C. is legally erroneous. When two persons jointly attacked a person, that too during night hours, it is unfair to expect from any witness to say, which injury was caused by which accused, and if at all, there could be a general statement. Both the accused jointly, in furtherance of

the common intention have trespassed into the house of P.W.1, making prior preparation, attacked Jayalakshmi, choosing the vital part of the body viz., head and this act of A-1 and A-2 should come in furtherance of the common intention, and therefore, the conviction slapped upon the accused appellant under Section 302 I.P.C. could be confirmed even under Section 302 r/w 34 I.P.C. in which there cannot be any illegality. In this view of the matter, the absence of evidence from the mouth of P.Ws.1 & 2, which injury inflicted by which accused cannot be a ground, for acquitting the appellant, since it is proved that he had also caused head injury. Similarly some contradiction or omission said to have been committed by P.Ws.1 & 2 as elicited from the cross examination of P.W.15 also fails to create any doubt in our mind, to doubt about the veracity of the evidence, given by them.

29. P.W.s.5 & 6 have no axe to grind against the accused, including the appellant. Admittedly, they have not seen the actual assault and they came to the spot immediately after the incident, that too, on information given by P.W.1, going to their place, followed by the incident continuously. As rightly submitted by the learned Additional Public Prosecutor, inviting our attention to Section 6 of the Indian Evidence Act, the evidence given by P.Ws.5 & 6 are quite relevant, since the fact disclosed by them comes within the meaning of 'form part of the same transaction'. Section 6 of the Indian Evidence Act reads:

"Facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places."

It is the specific case of the prosecution that immediately after the assault by the accused, in continuity P.W.1 rushed to P.Ws.5 & 6, upon enquiry informed about the assailants viz., the accused. If that is so, that comes within the meaning of relevancy of facts as contemplated under Section 6 of the Indian Evidence Act coming within the meaning of *res gestae* i.e. declarations and incidents accompanying or explaining the fact in issue or which are deemed to constitute the fact in issue. When P.Ws.5 & 6 have spoken about the information furnished by P.W.1, which is also the case of P.W.1, in continuation of the incident, which had taken place on 12.9.2002 at 11.30 p.m., it is not challenged and in this view, we are of the considered opinion that the evidence given by P.Ws.1, 5 & 6 about the involvement of the accused should come within the meaning of *res gestae*.

30. P.W.1 would state, that apprehending danger to his life, after the assault, he ran to the adjacent land in order to inform the

same, that too nude, since he lost the Dothi in the incident. He has further stated, that he informed Alagiri-P.W.5 about the incident, further testified that a Dothi was given to him by P.W.5. The evidence so given by P.W.1, not at all questioned, though it is suggested to P.W.1, that he was assaulted by some unknown thieves, for that the accused cannot be held responsible. But the fact remains, P.W.1 ran to the place of P.Ws.5 & 6 unchallenged. P.W.5 has also testified that on 12.9.2002 at about 12.00 midnight, P.W.1 came in nude crying and upon enquiry, he informed, mentioning the names of the accused, that they have assaulted. He has further stated, when they returned to the scene of crime, the accused were not there. It is the evidence of P.W.6 also. When there was no interference by anybody even before the matter was informed to the doctor, P.W.1 had reported to P.Ws.5 & 6 that he and his family members were assaulted by the accused, which includes the appellant also. It is suggested to P.Ws.5 & 6 that the above evidence is given only at the instance of the police. The denial of this relevant fact spoken by P.W.1, coupled with the unacceptable suggestion compels us, to think unhesitatingly that P.W.1 should have informed to P.Ws.5 & 6 that they were the victims of the assault, in the hands of the accused. Thus the oral evidence of P.Ws.5 and 6 also corroborates the oral evidence of P.Ws.1 & 2. Therefore, we are unable to find any semblance of doubt, to ignore the evidence of P.Ws.1, 2 5 & 6.

31. The trial Court, appreciating the oral evidence coupled with the medical evidence, has reached in our considered opinion, an unerring conclusion, in convicting the accused/appellant, though it appears the acquittal of A-3 may not be proper, which we are not concerned in this appeal. As we have already adverted to above, the acquittal of A-3 on improper ground, will not come to the aid of A-2 to get the same benefits. If the acquittal is accepted to be correct, which cannot be so in this case, then only the said benefit could be extended to A2, not otherwise.

32. An attempt was made to doubt the prosecution case on the basis of the recovery of the weapons said to have been used by the accused viz., M.Os.2 & 3. The Inspector of Police-P.W.15 would state, that on the basis of the confession said to have been given by the first accused viz., Ex.P5 M.Os.1 & 2 were recovered under Ex.P6 on 20.9.2002. Chemical Analyst's Report would indicate, that one of the iron rods contained human blood, though grouping test was inconclusive. P.W.1 would state, that the accused have left iron rods in their house itself, since he had raised alarm after the assault. Therefore, as rightly submitted by the learned senior counsel for the appellant, there is some inconsistency regarding the recovery, that cannot be denied. The mistake or defective investigation committed by the investigating officer, because of the above inconsistency, in our view, may not have the power of extinguishing the inspiring oral evidence of P.Ws.1, 2, 5 & 6, which implicated the accused appellant,

for the reasons assigned by us supra. Therefore, even assuming that the recovery of the weapons is not proved, that may not loom large, since the evidence would indicate, as opined by the doctor also, not challenged, Jayalakshmi should have sustained injuries by the assault with an iron rod. The fact P.Ws.1 & 2 have deposed that the accused have trespassed into the house, assaulted them, stands proved and in this view, it is to be held the offence under Section 452 I.P.C. also stands proved as concluded by the trial Court.

33. In the light of the above discussion and having regard to the facts and circumstances, in our deep consideration, the prosecution has established the guilt of the accused beyond all reasonable doubt, which was properly appreciated by the trial Court, which should receive our approval not disapproval, thereby making this appeal, unacceptable.

34. In order to bring the act of the accused/appellant other than under Section 302 I.P.C., as per the last submission of the learned senior counsel for the appellant, half heartedly, we are unable to find any reason. If the offence is to be brought down, ignoring 302 I.P.C. then the act committed by the accused appellant should come within the exceptions where it is stated culpable homicide is not murder. The acts of the accused/appellant fail to come within the meaning of provocation or right of private defence or without premeditation said to have been taken place in a sudden fight in the heat of passion upon a sudden quarrel etc. and therefore, bringing the accused either under Section 304 Part-I or Part-II I.P.C. is not legally possible, as rightly recorded by the trial Court.

35. The result, therefore, is the appeal is dismissed as devoid of merits, confirming the conviction and sentence of the learned District Sessions Judge, Perambalur in S.C.No.60/2003.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kv

To

1. THE DISTRICT & SESSIONS JUDGE,
PERAMBALUR.

2. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

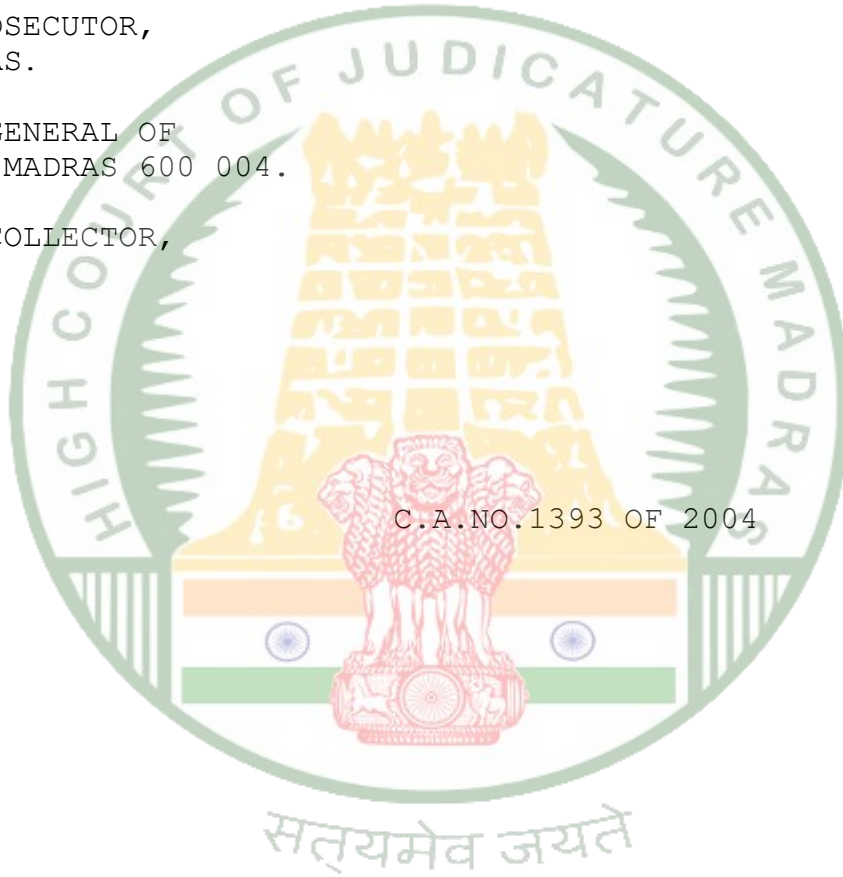
3. THE INSPECTOR OF POLICE,
PADALUR POLICE STATION.

4. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

5. THE DIRECTOR GENERAL OF
POLICE, MYLAPORE, MADRAS 600 004.

6. THE DISTRICT COLLECTOR,
PERAMBALUR.

TEJ (CO)
km/31.10.



C.A.NO.1393 OF 2004

WEB COPY